

July 8, 2005

Larry A. Alamao
Chief Counsel
Department of Real Estate
P.O. Box 187007
Sacramento, CA 95818-7007

Re: Your Request for Informal Assistance
Our File No. I-05-117

Dear Mr. Alamao:

This letter is in response to your request on behalf of Jeff Davi, Real Estate Commissioner for the Department of Real Estate, for advice regarding the disclosure provisions of the Political Reform Act (the "Act").¹ Since your request is of a general nature, we are treating it as a request for informal assistance.² Nothing in this letter should be construed to evaluate any conduct that has already taken place. The Commission does not provide advice relating to past conduct. (Regulations 18329(b)(8)(A) and (c)(4)(A).)

QUESTION

What is the proper method for determining the value of a gift received in accepting private airplane transportation, in order to reimburse the donor so as to avoid the gift prohibitions of the Act?

CONCLUSION

The value of a gift is its fair market value at the time it was received. The fair market value for private airplane transportation is determined by using either the equivalent commercial airfare or the charter rate divided by the number of passengers. A recipient of a gift may reimburse the donor, either partially or in full, within 30 days of

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

² Informal assistance does not confer the immunity provided by a Commission opinion or formal written advice. (Section 83114, regulation 18329(c)(3), copy enclosed.)

the receipt of the gift in order to avoid the gift reporting and gift prohibitions provisions of the Act.

FACTS

Jeff Davi was appointed by the Governor to the position of Real Estate Commissioner for the State of California.

Commissioner Davi's family home is in Monterey, California, but he performs his official duties as Real Estate Commissioner in the Sacramento Office of the department. Commissioner Davi will be commuting periodically between Monterey and Sacramento. Using a commercial airline in this situation is often not possible or convenient. Some acquaintances of Commissioner Davi own private airplanes and fly occasionally from Monterey to Sacramento. They have offered to let Commissioner Davi ride with them on those occasions. Commissioner Davi would like to reimburse them for those flights.

You have been informed that one method for valuing the cost of air travel is to look at the charges made by commercial airlines for such trips. The current published cost for a one-way airfare on a commercial carrier between Monterey and Sacramento is \$173.40.

In your previous request for advice on this matter, (No. W-04-243), you stated that the round-trip commercial airline rate was \$572.40 and asked if there was another appropriate method for determining the value. Because you were unable to determine the actual costs for the private flights, your request was withdrawn.

ANALYSIS

In an attempt to reduce improper influences on public officials, the Act regulates the receipt of gifts by candidates and public officials in three ways:

First, the Act places limitations on the acceptance of gifts from certain sources over a set limit. The current limit is \$360 or more from a single source in a calendar year. (Section 89503, regulation 18940.2.) Additionally, the Act prohibits any gift of \$10 or more in a calendar month from lobbyists or lobbying firms. (Sections 86203, 86204.)

Secondly, so that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on candidates and public officials, requiring that any gift of \$50 or more from certain sources be reported and disclosed on a public document, referred to as a Statement of Economic Interests. (Sections 87200, 87203, 87207, 87300, and 87302.)

Finally, the Act prohibits a public official from using his or her position to influence the outcome of a decision involving the donor of a gift or gifts with an aggregate value of \$360 or more provided to, received by, or promised to the public

official within 12 months prior to the time the decision is made. (Sections 87100, 87103(e), regulations 18700, 18703.4.)

Section 82028 defines a gift as “any payment that confers a personal benefit on the recipient.” Section 82044 defines payment, in part, as any “rendering of ... services or anything else of value, whether tangible or intangible.” Under the facts you have presented, in accepting private airplane transportation, Commissioner Davi will have received a gift.

Regulation 18946 provides that “gifts shall be valued at fair market value as of the *date of receipt or promise*.” Regulation 18941(a) states that “a gift is ‘received’ or ‘accepted’ when the recipient knows that he or she has either actual possession of the gift or takes any action exercising direction or control over the gift.”

To determine the fair market value of the private air transportation, you can use either the commercial fare for an equivalent flight or the charter airfare divided by the number of passengers. (*In re Stone* (1977) 3 FPPC Ops. 52; *Langston* Advice Letter, No. A-90-041; *Israel* Advice Letter, No. A-90-125; *Bagatelos* Advice Letter, No. I-90-561; *Paul* Advice Letter, No. I-03-218.)

Section 82028(b)(2) states that the term “gift” does not include:

“Gifts which are not used and which, within 30 days after receipt, are ... returned to the donor ...

Regulation 18943(a) sets out how to apply section 82028(b)(2). Subdivision (a)(4) pertains to your question and provides:

“(a) General Rule for Return, Donation, or Reimbursement of a Gift. A gift is neither accepted nor received if it is returned, donated, or reimbursed in any manner set forth below:

{ ... }

(4) The recipient, within 30 days of receipt or acceptance, reimburses the donor, or the donor’s agent or intermediary, for all or a portion of the gift. In such event the value of the gift is reduced by the amount of the reimbursement, and the amount of any gift or activity expenses which must be disclosed is reduced by the amount of the reimbursement.”

Under the facts you have presented, the current fair market value of a flight from Monterey to Sacramento is \$173.40. However, your previous request indicated that the fair market value of the round-trip airfare was \$572.40. If Mr. Davi has accepted private air transportation from an individual, he will need to report the gift at its value at the time

the gift was received. (Regulation 18941.) If Mr. Davi has reimbursed the individual within 30 days of the receipt of the gift, he need only report any cumulative nonreimbursed amounts totaling \$50 or more received during the reporting period.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: William J. Lenkeit
Counsel, Legal Division

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